

## Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 OIC-02 IO-14 EB-07 COME-00

CIAE-00 INR-07 NSAE-00 AF-10 ARA-14 EA-09 NEA-10

STR-04 TRSE-00 /093 W

-----111125Z 036677 /12

R 101916Z JUN 77

FM AMEMBASSY VIENNA

TO SECSTATE WASHDC 2074

UNCLAS SECTION 1 OF 2 VIENNA 4718

E.O. 11652: N/A

TAGS: ONCON, UNCITRAL

SUBJECT: UNCITRAL PLENARY, MAY 23-JUNE 17-SECOND WEEK

1. SUMMARY: DURING SECOND WEEK CONFERENCE CONSIDERED SECTIONS II AND III OF CHAPTER III OF DRAFT CONVENTION ON INTERNATIONAL SALE OF GOODS (CISG)- SEE A/CN.9/116). FEW CHANGES MADE, BUT PROGRESS DRASTICALLY SLOWED BY INFECTION INFO DISCUSSIONS OF POLITICAL ELEMENTS, LONG INTERVENTIONS, AND LACK OF RESPONSIBILITY, WHICH FORCED SATURDAY MEETING. DRAFTING GROUP SIMILARLY PLAGUED.

2. CHAPTER III (OBLIGATIONS OF THE SELLER), SECTION II (CONFORMITY OF THE GOODS) LARGELY COMPLETED IN ONE DAY:  
A. ARTICLE 19 ("CONFORMITY"): TEXT RETAINED, AFTER C/W I REJECTED PROPOSALS BY THE FRG (DELETE SUB-PARA B),USSR (DELETE SUB-PARA B FROM "EXCEPT"), INDIA (DELETE SUB-PARA B FROM "OR THAT"), USSR (DELETE IN SUB-PARA B "OR IMPLIEDLY"), GDR (SUBSTITUTE FOR SUB-PARA B "EXPRESSLY OR IMPLIEDLY MADE KNOWN TO THE SELLER"WHICH HAD BEEN EXPRESSLY OR IMPLIEDLY AGREED UPON IN THE CONTRACT"), AND, SEVERAL DAYS LATER, BY CZECHOSLOVAKIA AND DENMARK (ADD NEW PARA 3 CLARIFYING SITUATION WHERE BUYER SUPPLIES DEFECTIVE GOODS FOR MAUFACTURE). US PROPOSAL TO CLARIFY THIS IN ARTICLE 3(2) REREJECTED.  
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B. ARTICLE 20 (LIABILITY FOR NON-CONFORMITY): TEXT RETAINED.

C. ARTICLE 21 (CURE IN CASE OF EARLY DELIVERY): TEXT RETAINED AFTER GREEK PROPOSAL FOR EXPRESS RIGHT TO DELIVER EARLY DEFEATED.

D. ARTICLE 22 (BUYER'S OBLIGATION TO EXAMINE): TEXT RETAINED AFTER PROPOSALS BY INDIA, ("REASONABLE" OPPORTUNITY

TO EXAMINE IN PARA 1), AND GREECE (SPECIFY "FINAL" DESTINATION IN PARA 2) REJECTED.

3. ARTICLE 23 (LOSS OF RIGHT TO RELY ON NON-CONFORMITY): TEXT LARGELY RETAINED. PARA(1) SENT TO DRAFTING GROUP TO INCORPORATE GHANAIAN AMENDMENT "OUGHT IN THE CIRCUMSTANCES." EXTENSIVE DECUSSION, STRONGLY PARTICIPATED IN BY GHANA AND SINGAPORE WHO VIEWED TWO YEAR TIME LIMIT (PARA 2), AND LOSS OF RIGHT TO RELY IF "OUGHT TO" HAVE DICOVERED CONFORMITY WITHIN REASONABLE TIME (PARA 1) AS BUYERS' AND COSEQUENTLY LDC ISSUES.

F. ART QIFSELLER CAGELY ON OWN FAILURE TO DISCLOSE LACK OF CONFORMITY): TEXT RETAINED.

G. ARTICLE 25 (OBLIGATION TO DELIVER FREE OF RITHTS AND OBLIGATIONS OF THIRD PARTIES): SPECIAL WORKING GROUP ESTABLISHED, INCLUDING FINLAND (US AS ADVISER), GDR, GHANA, INDIA, AND MEXICO, ALL OF WHOM HAD SUBMITTED PROPOSALS.

3. SECTION III (REMEDIES FOR BREACH OF CONTRACT BY THE SELLER):

A. ARTICLE 26 (BUYER'S RIGHTS): APPROVED SUBJECT TO DRAFTING AFTER INDICATIONS THAT LACK OF CONJUNCTION BETWEEN SUBPARAS (A) AND (B) UNACCEPTABLE TO MANY; NORWEGIAN PROPOSAL SUPPORTED BY US THAT CONVENTION REMEDIES EXCLUDED ALL OTHERS EXCEPT IN CASE OF FRAUD WAS DEFEATED.

B. ARTICLE 27 (SPECIFIC PERFORMANCE, SUBSTITUTE PERFORMANCE REQUESTED BY BUYER): TEXT RETAINED, AFTER REJECTION OF UNCLASSIFIED

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PROPOSAL BY WORKING GROUP INCLUDING AUSTRALIA, CHILE, FRG GHANA, JAPAN, NORWAY, YUGOSLAVIA, DESIGNED TO CLARIFY BUYER'S RIGHTS.

C. ARTICLE 28 ("NACHFRIST"): ADOPTED IN SUBSTANCE, SENT TO DRAFTING GROUP TO CLARIFY THAT BUYER RETAINS ALL RIGHTS IN EVENT OF NON-PERFORMANCE AND TO REQUIRE A FIXED AND REASONABLE TIME FOR PERFORMANCE.

D. ARTICLE 29 (RIGHT TO CURE): SENT TO DRAFTING GROUP. NEW TEXT OF PARA (1) PROPOSED BY US, DENMARK, HUNGARY AND INDIA ADOPTED SUBJECT TO DRAFTING: "THE SELLER MAY, AT HIS OWN EXPENSE, CURE...UNREASONABLE INCONVENIENCE, INCLUDING ANY UNCERTAINTY IN REIMBURSEMENT BY THE SELLER OF

EXPENSES ADVANCED BY THE BUYER, UNLESS THE BUYER HAS DECLARED TO CONTRACT AVOIDED IN ACCORDANCE WITH ARTICLE 30." THE COMMITTEE-AGREED THAT AN EXCEPTION TO THE GENERAL DISPATCH RULE (ARTICLE 10) SHOULD APPLY TO PARAS (2) AND

(3).

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ACTION L-03

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STR-04 TRSE-00 /093 W  
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E. ARTICLE 30 (AVOIDANCE OF CONTRACT BY BUYER): ACCEPTED  
IN PRINCIPLE, AND REFERRED TO THE DRAFTING COMMITTEE.

F. ARTICLE 31 (REDUCTION IN PRICE FOR NON-CONFORMITY):  
APPROVED SUBJECT TO CLARIFYING DRAFTING CHANGES,  
PRINCIPALLY STATES NOT FAMILAR WITH THIS REMEDY.

G. ARTICLE 32 (PARTIAL DELIVERY): TEXT RETAINED SUBJECT  
TO MINOR DRAFTING CHANGES.

H. ARTICLE 33 (EARLY OR EXCESS DELIVERY): TEXT RETAINED  
AFTER EFFORTS TO REQUIRE ACCEPTANCE OF EARLY DELIVERY UNLESS  
UNREASONABLE TO ACCEPT.

4. WHILE NO UNACCEPTABLE CHANGES WERE MADE IN THE TEXT  
DURING THE SECOND WEEK, FACILITATING AND ACCOMMODATING  
PROPOSALS BY US WERE INCREASINGLY REJECTED AS  
WEEK PROGRESSED, FOR NO EVIDENT REASON. BY END OF WEEK  
CONFERENCE WAS SERIOUSLY BEHIND SCHEDULE, A SITUATION NOT  
HELPED BY INABILITY OF TEMPORARY CHAIRMEN TO CONTROL  
LENGTH OF SPEECHES BY SOME DELEGATES.

5. SIMILAR SITUATION OCCURRED IN DRAFTING COMMITTEE,  
CHAired BY KHOO (SINGAPORE), WHICH SPENT TWO HOURS  
DECIDING TO FOLLOW INSTRUCTIONS OF COMMITTEE OF THE  
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WHOLE TO SHIFT ARTICLE 6 (C) TO A NEW ARTICLE 1(3)  
SEVERAL FRIENDLY DELEGATES EXPRESSED DISGUST WITH GENERAL  
STATE OFFAIRS BY END OF WEEK. MEEHAN

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